

MINUTES

**MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN DALE MAHLUM**, on February 11, 2003 at 9:02 A.M., in Room 422 Capitol.

ROLL CALL

Members Present:

Sen. Dale Mahlum, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Sherm Anderson (R)
Sen. Vicki Cocchiarella (D)
Sen. Kelly Gebhardt (R)
Sen. Ken (Kim) Hansen (D)
Sen. Sam Kitzenberg (R)
Sen. Glenn Roush (D)
Sen. Don Ryan (D)
Sen. Carolyn Squires (D)

Members Excused: Sen. Bob Keenan (R)
Sen. Fred Thomas (R)

Members Absent: None.

Staff Present: Sherrie Handel, Committee Secretary
Eddy McClure, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 270, 1/25/2003; SB 334, 2/5/2003
Executive Action:

{Tape: 1; Side: A}

HEARING ON SB 270

Sponsor: SENATOR DAN HARRINGTON, SD 19, BUTTE

Proponents: Jason Miller, United Brotherhood of Carpenters; J.D.Lynch, Montana State Building Trades; Byron Roberts, Montana Building Industries Trade Association; Dennis Iverson, Montana Contractors Association; Bob Pavlovich, IBEW 233; Carl Schweitzer, American Sub-Contractors Association of Montana; David Warner, United Brotherhood of Carpenters; Jerry Driscoll, AFL/CIO; and Linda Stoll, independent contractor

Opponents: None

Opening Statement by Sponsor:

SENATOR DAN HARRINGTON, SD 19, BUTTE, brought before the committee SB 270 to revise the independent contractor law. SEN. HARRINGTON explained this bill would require that a building insurance policy be a prerequisite when receiving an independent contractor exemption. This portion of the bill would reduce the number of mis-classified employees representing themselves as independent contractors. He went on to say a civil penalty would be imposed for any employer who falsely represents their employees' status. Business liability insurance was covered next. He stated it had become clear that business liability insurance is difficult to obtain and amendments would soon be available.

Proponents' Testimony:

Jason Miller, United Brotherhood of Carpenters, rose in support of the bill.

J.D. Lynch, Montana State Building Trades, also lent his organization's support to SB 270.

Byron Roberts, Montana Building Trades Industries Trade Association, said that having worked with the law for six years, they recognize there are abuses in the exemption of independent contractors, specifically sole proprietors. His organization has worked with the Department of Labor on the problem, and he felt some independent contractors abuse the intent of the law. Mr. Roberts shared with the committee some of the details of a lawsuit being heard by the Supreme Court at the present time which is going to verify the outcome or put a stamp of approval

on the existing system; but, one of the things they want to be sure of is that liability protection is monitored. The case involved a Bozeman roofing contractor who went to work for another roofing contractor. He held a contractor exemption; he signed an affidavit saying he was an independent contractor. The roofer fell off a roof and all of a sudden became an employee. He took the roofing firm for whom he was working to task and then took the builder to task. It ended up in the Supreme Court after the lower court said the he was, in fact, an independent contractor. The case is being appealed and the industry is waiting for the outcome of the case. **Mr. Byron** recognized that the Department of Labor does not have the means to police legitimate independent contractors. He felt that what needed to be done was to sit down and work out the system. He thought something could be done administratively within the Department of Labor with regard to their forms and administrative procedures. He lent his support to the bill and said he looked forward to working toward a successful conclusion.

Dennis Iverson, Montana Contractors Association, lent their support of the bill with **SEN. HARRINGTON'S** amendment.

Bob Pavlovich, IBEW 233, stated support for SB 270 with its amendments.

Carl Schweitzer, American Sub-Contractors Association of Montana, also supported the bill. He contacted a number of his members about SB 270 as well as a number of roofers. One of their biggest complaints was having to compete against people that hire people as independent contractors yet treat them as employees. He stated it is an unfair situation to try and bid against those types of people that are abusing the system.

David Warner, United Brotherhood of Carpenters, shared an instance which occurred about two years ago when he walked onto a job site and discovered that nearly all of the individuals working on the job site claimed to be independent contractors with three of them hired out of a temporary employment services agency in Great Falls. He said that situation exemplifies how prevalent this problem is and said he supports the bill.

Jerry Driscoll, AFL/CIO, lent his organization's support of the bill with amendments. He said the biggest problem is that nobody knows the definition of an independent contractor and it's a big problem. He felt the issue needs to be studied more or change the title of "independent contractor."

Several years ago, the last proponent, **Linda Stoll, independent contractor and lobbyist**, said she decided that one of the ways

she would support herself during the even-numbered years when the legislature is not in session, would be to enter the construction field. She entered the University of Montana system and has completed all but one semester for a construction technology degree. When her son in Las Vegas purchased an older home to remodel, he asked **Ms. Stoll** to be the primary contractor for the project. She already had her contractors license from the state; however, the Department of Labor and the bank in Las Vegas said she needed liability insurance. She said that's why she was at the meeting and supporting the bill. She recently made 75 calls, contacted 36 different states and found there isn't any contractor liability insurance to be had for a new contractor. If a contractor were already in the business, they can renew their existing policy; otherwise, it's not available. **Ms. Stoll** discussed the many talented young people going to school now or working for contractors who will want to create their own company someday. Without liability insurance, they won't be able to land any jobs.

Informational Witness Testimony:

Jerry Keck, Employment Relations Division, Department of Labor, shared that they administer and implement the independent contractor program. He offered to answer any questions the committee may have.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. CAROLYN SQUIRES inquired of **Mr. Keck** the number of insured people who report to his department; and if violations have been on the increase. **Mr. Keck** replied that they don't get very good feedback on the violations. In 1995, there was discussion on the issue and the question was if the department should require documentation up front before they issued an independent contractor's permit. He explained the necessary documentation would be a business card, local advertising, a copy of a contract or bid or the filing of a business income tax return. The decision was made at that time that it was too onerous a requirement for new businesses. A compromise was made that they have a person seeking a contract exemption sign an affidavit, a copy of which **Mr. Keck** distributed to committee members, **EXHIBIT (bus30a01)**. If they assert in this notarized affidavit that they meet these conditions for being an independent contractor, his department issues the exemption. He explained that these exemptions have been on the rise since 1998, when there were about 14K. Today they have 28K independent contractors in the state. **Mr. Keck** was aware that some of these

independent contractor exemptions don't meet the legal definition. As a way of trying to police the situation, when a person wants to renew their exemption, **Mr. Keck's** department verifies with the Department of Revenue that they've filed business practice. If you're an independent contractor, you must have filed a Schedule C with your income taxes. If they haven't done so, **Mr. Keck's** department requires documented proof of their independent contractor status. If it is not provided, their application for renewal is refused.

SEN. SQUIRES wanted to know where an individual goes who has filed an affidavit, goes to work, but there is no comp, and he gets hurt. **Mr. Keck** answered the person who signs the affidavit is informed at that time that he has no workers comp coverage.

SEN. MIKE SPRAGUE referred to a 1995 case where an independent contractor fell off the roof. He asked if the general contractor were to hire a sub-contractor, is it their responsibility to ask them for their exemption or their independent status? **Mr. Keck** replied that any prudent contractor or sub-contractor should be asking to see the exemption before allowing someone on the job.

{Tape: 1; Side: B}

SEN. SHERM ANDERSON and **Mr. Keck** continued the discussion about the filing of a tax return by independent contractors. **Mr. Keck** explained that the registered contractor program is for all businesses who actually have employees. When his department issues the contractor registration to those individuals who elect exempt status, they automatically give them an independent contractor exemption.

SEN. VICKI COCCHIARELLA requested an explanation of the amendment again from **SEN. HARRINGTON**, who shared that the proposed amendment says the Department of Labor would convene a committee made up of representatives of the Montana Contractors Association, the Montana Home Builders Association, Montana Sub-Contractors, Montana Building Trades, the Montana Heavy Highway Committee, the United Brotherhood of Carpenters, the Montana Department of Revenue and the workers comp industry to be funded by the contractors registration program. The committee would investigate the impact of current independent contractors exemption program of the construction industry.

Mr. Keck was asked by **SEN. COCCHIARELLA** if there is money available for this kind of study. **Mr. Keck** hoped that the expense would not be too substantial. If so, he thought they could pay for it out of contractor registration fees or independent contractor fees.

SEN. COCCHIARELLA and **Webb Brown, Montana Chamber of Commerce**, talked about whether or not his organization had been policing this issue, which they had not. At **SEN. COCCHIARELLA'S** question asking **Mr. Brown** if his organization would be interested in participating in the committee, **Mr. Brown** replied in the affirmative.

SEN. KELLY GEBHARDT stated that with what's left in this bill, the \$1K penalty for the employer of a falsely represented thing in the interim committee is all that's left in this bill. **SEN. HARRINGTON** agreed with him.

In response to **SEN. COCCHIARELLA'S** request for the definition of a sole proprietor, **Nancy Butler, Montana State Fund**, answered that any employer or sole proprietor can contact State Fund and purchase coverage. They just complete an application and, under the statute for sole proprietors, they elect a level of coverage. It can't be more than 1 1/2 times the state's average (approximately \$500 per month). If they elect the level of coverage they want to receive, you pay premiums under the appropriate class in accordance with that election. If they're injured, then, of course, they are covered like any other employee under the act, with medical coverage and the compensation, at the level elected, is available for anyone who wants to purchase coverage on themselves. She went on to say the minimum premium policies are around \$275 per year, but she was assuming that if a person is in the construction business, he's likely earning a lot more, so he would take the amount of money made in a month and then for every \$100 in coverage elected, you would owe the appropriate premium. **Ms. Butler** explained that it's the job of State Fund to provide coverage for any employer in Montana who requests it. The only prohibition is if they owe money from a prior policy. If they don't, the coverage is there for anybody who wants to elect it on themselves.

Closing by Sponsor:

SEN. HARRINGTON felt the case for SB 270 had clearly been made and went on to discuss the funding of it. He requested that the committee go ahead with the amendments.

{Tape: 2; Side: A}

HEARING ON SB 334

Sponsor: **SEN. MIKE SPRAGUE, SD 6, BILLINGS**

Proponents: **Margaret Morgan, Distilled Spirits Council of the United States (DISCUS); Mark Staples, Montana**

**Tavern Association; David Lemm, Montana
Distillers; Jim Hutchison, vendor representative
from Missoula, Bob Lemm, liquor broker**

Opponents: Jackie Thomas, Agency Store 170 in Missoula

**Informational Witnesses: Shauna Bingham, Department of Revenue
SEN. JOE TROPILA, SD 24, GREAT FALLS**

Opening Statement by Sponsor:

SEN. MIKE SPRAGUE, SD 6, BILLINGS, opened his bill by explaining that in order for distilled liquor distributors to hire new sales representatives, they must have legislative approval.

Proponents' Testimony:

Margaret Morgan, Distilled Spirits Council of the United States (DISCUS), explained her organization is a national association with a membership made up of vendors. She distributed a chart, **EXHIBIT (bus30a02)**, showing how distilled liquor is distributed in Montana. She said this bill is very simple. It would allow a vendor to hire one additional representative to market their products in bars, restaurants and agency stores. She asked the committee for their support of the bill.

Mark Staples, Montana Tavern Association, asked that the request for additional sales reps remain at one for a total of three, which is what had been agreed upon.

David Lemm, Montana Distillers, stated as a vendor in Montana and as a vendor in Idaho, they are in agreement that the number of representatives should be moved to three. He also expressed agreement with representatives being required to be residents of Montana or to become residents after employment.

Jim Hutchison, vendor representative from Missoula, said he represents a number of medium and small suppliers in the state. He supported the bill with a total of three reps, as originally agreed.

Bob Lemm, said he's a third generation Montanan and has been a liquor broker in Montana for almost 30 years. He agreed with the language as far as three; however, he wanted the 30-day wording to remain in the bill.

Opponents' Testimony:

Jackie Thomas, Agency Store 170 in Missoula, discussed problems as a store owner who has to buy products that possibly might not sell. She did, however, agree with adding one new rep for a total of three.

Informational Witness Testimony:

Shauna Bingham, Department of Revenue, made herself available for any questions.

SEN. JOE TROPILA, SD 24, GREAT FALLS, offered himself as an informational witness. He said that prior to 1975, the law stated that a salesman did not have to reside in Montana. The law he helped pass changed all of that and salesmen now have to be residents of Montana.

Questions from Committee Members and Responses:

The 60-day grace period was discussed by **SEN. MIKE SPRAGUE**.

SEN. KELLY GEBHARDT wanted to know if the distributors had to fill all three slots, which was answered in the affirmative.

CHAIRMAN DALE MAHLUM asked **Bob Lemm** if the third representative would bother the current reps by diminishing their wages. **Mr. Lemm** didn't think so.

{Tape: 2; Side: B}

Closing by Sponsor:

SEN. SPRAGUE closed on the bill.

ADJOURNMENT

Adjournment: 10:40 A.M.

SEN. DALE MAHLUM, Chairman

SHERRIE HANDEL, Secretary

DM/SH

EXHIBIT (bus30aad)